

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Daniel Baumgartner <i>et al.</i>	Confirmation No.:	3694
Application No.:	10/553,495	Art Unit:	3733
Filed:	07/25/2006	Examiner:	Yang, Andrew
Attorney Docket No:	01227.0032		
For:	INTERVERTBRAL IMPLANT		

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

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Commissioner for Patents
PO Box 1450
Alexandria, Virginia 22313-1450

Sir:

In response to the Notice of Allowance and Fee(s) Due of the United States Patent and Trademark Office, dated July 25, 2008, Applicants respectfully submit the following Comments on Statement of Reasons for Allowance objecting to the Examiner's Statement of Reasons for Allowance listed on page 2 of the Notice of Allowability.

37 CFR § 1.104(e) and MPEP § 1302.14 permit an Examiner to set forth a written statement of reasons for allowance under specific circumstances. However, certain requirements for the statement of reasons for allowance are expressly set forth in MPEP § 1302.14, including the requirement that "[w]here specific reasons are recorded by the examiner, care must be taken to ensure that statements of reasons for allowance (or indication of allowable subject matter) are accurate, precise, and do not place unwarranted interpretations, whether broad or narrow, upon the claims."

The Examiner's Reasons for Allowance listed in the third paragraph on page 2 of the Notice of Allowability are objected to at least on the ground that they fail to comply with the aforesaid requirement of MPEP § 1302.14 because the reasons for allowance are not wholly accurate and place an unnecessarily narrow interpretation on the claims. Applicants deny acquiescence to the reasons for allowance and further deny being bound by any negative inferences that may flow therefrom in any future proceeding regarding this application or any patent issuing directly or indirectly therefrom.

Applicants object to the Examiner's Statement of Reasons for Allowance because the Examiner lists features or elements in the Reasons for Allowance that are not included in the independent claims. Specifically, none of the claims include a "central portion", an "elastic body", an "elastic sheathing system", "a core with an elastic body that is at least partially surrounded by a fiber system" or a "fiber system is wound on the elastic body", as is indicated in the Examiner's Reasons for Allowance. Independent claims 1, 26 and 47 claim a "central part", an "elastic sheathing body" or "the core is an elastically formed body" and "the fiber system ... at least partially surrounding(s) the core". In addition, independent claim 1 recites, "the fiber system being wound on the elastic formed body", but independent claims 26 and 47 do not recite the word, "wound" or claim in any manner that the fiber system is wound on an elastic body.

In, addition, regarding the Examiner's statements related to U.S. Patent No. 6,733,533 (Lozier), Applicants do not stipulate that Lozier is prior art against the present application. To the extent that Lozier may even be considered prior art against the present application, Applicants object to the Examiner's Statement of Reasons for Allowance because of the Examiner's potential

mischaracterization of and confusing statements related to Lozier. The Examiner states, “[n]ewly cited reference of Lozier (U.S. Patent No. 6733533) shows an implant having a central part having a core with an elastic body 120 filled with a material within a fiber system 140, however, the fiber system is not wound on the elastic body, but only serves as a barrier to contain it. Furthermore, Lozier fails to teach a sheath around the central portion.” Applicants submit that Lozier does not recite the words or phrases, “core”, “elastic”, “central part”, “barrier”, “sheath”, “central portion” or “fiber system”, which the Examiner utilizes to characterize Lozier, much less does Lozier utilize these words or phrases to describe elements or features of the disclosed device. Further, Applicants submit that the Examiner’s statements related to Lozier that “the fiber system is not wound on the elastic body, but only serves to act as a barrier to contain it” and “Lozier fails to teach a sheath around the central portion” are confusing and potentially mischaracterize the device of Lozier.

Applicants respectfully submit that claims 1, 2, 4-8, 13-22, 24-28, 30-33, 40-42 and 47-50 are patentable over the prior art of record because they meet all patentability requirements set forth by the U.S. Patent and Trademark Office.

No fee is believed due for this submission. If, however, the Commissioner determines otherwise, the Commissioner is authorized to charge any fees which may now or hereafter be due in this application to Deposit Account No. 19-4709.

Date: August 20, 2008

Respectfully submitted,

/Giuseppe Molaro/
Giuseppe Molaro
Registration No. 52,039

For: Brian M. Rothery
Registration No. 35,340

Attorney for Applicants
Stroock & Stroock & Lavan LLP
180 Maiden Lane
New York, New York 10038
(212) 806-6114